

ST 00-12

Tax Type: Sales Tax

Issue: Reasonable Cause on Application of Penalties

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No.
v.)	IBT #
)	
JOHN DOE d/b/a)	
DOE SOFTWARE)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Heidi Scott, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JOHN DOE, appearing *pro se*.

Synopsis:

The Department of Revenue (“Department”) issued six Notices of Assessment (“Notices”) to JOHN DOE d/b/a DOE Software (“taxpayer”) for retailers’ occupation taxes (ROT) owed for the periods of January 1997 to September 1997 and January 1998 to September 1998. The taxpayer timely protested the Notices. An evidentiary hearing was held during which the taxpayer did not contest the tax but requested that the penalties be abated due to reasonable cause. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer did not file ROT returns for the first three quarters of 1997 and the first three quarters of 1998. (Dept. Ex. #6, 7, Tr. p. 24)

2. On January 21, 1999, the Department issued three Notices of Tax Liability to the taxpayer for ROT due for the first three quarters of 1997. Each Notice stated that if the taxpayer agreed with the figures, then the balance was due on or before February 22, 1999 to avoid additional interest charges. The Notices also stated that if the taxpayer wished to file a protest and request a hearing, then he must do so by March 22, 1999. (Dept. Ex. #1)

3. On April 5, 1999, the Department issued three Notices of Assessment to the taxpayer for ROT for the first three quarters of 1997. Each Notice included a penalty for the late filing of the tax returns. (Dept. Ex. #2)

4. On April 29, 1999, the Department issued three Notices of Assessment to the taxpayer for ROT for the first three quarters of 1998. Each Notice contained a late filing penalty and a late payment penalty. (Dept. Ex. #2)

5. The Notices issued by the Department to the taxpayer were admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1, 2)

6. In 1995, the taxpayer filed quarterly ROT returns. In 1996, the taxpayer filed one annual return. In 1997 and 1998, the taxpayer was to file on a quarterly basis. (Dept. Ex. #5, 6, 7)

CONCLUSIONS OF LAW:

The Department imposed penalties for the late filing and late payment of the ROT pursuant to section 3-3 of the Uniform Penalty and Interest Act (UPIA) (35 ILCS 735/3-1

et seq.) Section 3-8 of the UPIA provides a basis for the abatement of the section 3-3 penalties and states in part as follows:

“The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.” (35 ILCS 735/3-8)

The Department’s regulations concerning reasonable cause provide in part as follows:

“The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill.Admin.Code §700.400(b)

The taxpayer argues that the penalties should be abated because when he received the first three Notices of Tax Liability from the Department, he believed that the deadline for paying the taxes was March 22, 1999, which was actually the deadline for filing a protest and requesting a hearing. After he received the Notices, he paid the tax to the Department on March 12, 1999. The taxpayer adds that the reason that the original forms were not filed on time was that his computer system crashed and his information from 1997 through mid-1998 was lost. During his arguments at the hearing, the taxpayer stated that he attempted to make a good faith effort from the time he received the Department’s Notices that the taxes were owed. (Tr. p. 43) The taxpayer stated “I’m not really talking about my bad faith in filing the forms, so I’m talking about my good faith efforts to resolve the issue once I was aware of the issue that I needed to get it paid in time.” (Tr. p. 43)

The reasons provided by the taxpayer are insufficient for abating the penalties due to reasonable cause. Although the taxpayer may have made a good faith effort to pay the taxes once he received the Department's Notices, the regulation requires a good faith effort at the time that the original returns were due to be filed and paid. The taxpayer admitted that he did not timely file the returns. (Tr. p. 24) The only explanation given by the taxpayer for his failure to file the returns was that his computer system had crashed. As the Department pointed out at the hearing, this happened in May of 1998. (Tr. p. 20) As unfortunate as this event may have been, it does not explain the failure to file the 1997 quarterly returns and the return for the first quarter of 1998. Also, although the taxpayer stated that the loss of his computer system required him to resort to his paper files in order to prepare the returns, this does not clarify why the second and third quarter returns for 1998 were not filed.

The taxpayer also mentioned at the hearing that his office assistant who was responsible for preparing the returns submitted his resignation in January of 1998 (Tr. p. 15). This, however, does not explain the failure to file the returns for the first three quarters of 1997. In addition, the taxpayer was always the one responsible for signing the tax returns and the corresponding checks. (Tr. pp. 22, 24) The taxpayer gave no justification for neglecting his tax responsibilities once his office assistant left.

The last point raised by the taxpayer is that he thought that his filing status changed from quarterly to yearly. (Tr. p. 24) According to the Department's records, the taxpayer did file an annual return for 1996. It is understandable why there may have been some confusion as to whether he was to file on an annual basis. Nevertheless, the taxpayer filed fourth quarter returns for both 1997 and 1998, and no explanation was

given as to the effort the taxpayer made to determine his proper filing status and his effort to file and pay his returns in a timely fashion. Without this explanation, an abatement of the penalties is not warranted.

Recommendation:

For the foregoing reasons, it is recommended that the penalties be upheld.

Linda Olivero
Administrative Law Judge

Enter: March 29, 2000